

1 THE HONORABLE RONALD B. LEIGHTON

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6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 THOMAS CASCADDAN,

11 Plaintiff,

12 v.

13 THE PRUDENTIAL INSURANCE
14 COMPANY OF AMERICA,

Defendant.

Case No. 3:17-cv-05402-RBL

**JOINT STIPULATION FOR DE
NOVO STANDARD OF REVIEW**

15 Plaintiff Thomas Cascaddan (“Cascaddan”) and Defendant The Prudential Insurance
16 Company of America (“Prudential”) (collectively, “Parties”), by and through their respective
17 counsel of record, hereby stipulate that for purposes of this case only, this Court shall apply a *de*
18 *novο* standard of review to Prudential’s decision denying Cascaddan’s claim for long-term
19 disability benefits at issue in this case, including without limit at trial, on summary judgment and
20 in all other proceedings and hearings. The parties further stipulate that this matter will be heard
21 on FRCP 52 motions for trial on the administrative record. *Kearney v. Standard Ins. Co.*, 175
22 F.3d 1084, 1095 (9th Cir. 1999).

23 Prudential’s agreement that its decision shall be reviewed *de novo* is in recognition of the
24 Ninth Circuit Court of Appeals’ decision in *Orzechowski v. Boeing Co. Non-Union Long-Term*
25 *Disability Plan*, No. 14-55919, 2017 WL 1947883, __ F.3d __ (9th Cir. May 11, 2017), and
26 applies only to the Court’s review in this particular case.

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JOINT STIPULATION FOR DE NOVO STANDARD OF REVIEW
(No.: 3:17-cv-05402-RBL) - 1

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1 Notwithstanding anything in this Stipulation, the Parties agree that Prudential reserves its
2 right to assert that the abuse of discretion standard applies to its denial decision if, while this case
3 is still pending in this Court, (1) the Ninth Circuit grants a rehearing or a rehearing *en banc* in
4 *Orzechowski*; or (2) the United States Supreme Court grants *certiorari* in: (a) *Orzechowski*, or
5 (b) another case raising the same issue. The Parties further agree that, in the event that Prudential
6 elects to assert that the abuse of discretion standard applies, Prudential will promptly notify
7 Cascaddan of its intent and, moreover, Cascaddan will then have the right to file a motion to
8 determine the proper standard of review in this case even if the dispositive motion deadline has
9 passed.

10 The Parties jointly request their stipulation to be entered as an order of this Court
11 governing further proceedings in this action.

12 DATED: September 6, 2017.

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14 ROY LAW

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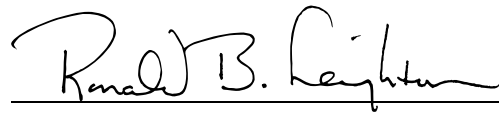
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ORDER

IT IS SO ORDERED. The Parties' joint stipulation for de novo standard of review is hereby APPROVED.

DATED this 13th day of September, 2017.



Ronald B. Leighton
United States District Judge